UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
vs : CRIMINAL CASE NO. 1827-72
)
GEORGE GORDON LIDDY ET AL)

FILED
APR 25 1973
JAMES F. DAVEY, Clerk

R E C E I P T

Receipt is acknowledged, this date, of the following named documents from James P. Capitanio, Deputy Clerk, in the above captioned case:

(1) Copy of transcript of proceedings held in chambers on Tuesday, January 9, 1973, pages 1-8, inclusive.

(2) Copy of transcript of proceedings held in conference room in rear of Ceremonial Court Room on January 11, 1973 (pages 133-155-B, inclusive.

(3) Copy of transcript of proceeings of Friday, January 12, 1973, pages 302-318, inclusive.

(4) Copy of transcript of proceedings of Friday, January 12, 1973, pages 319-352, inclusive.

(5) Copy of transcript of proceedings of Friday, January 26, 1973, held in chambers of Chief Judge Sirica, pages 1676-1689 (1690).

(6) Copy of transcript of proceedings of Wednesday, January 24, 1973, held in chambers of Chief Judge Sirica, pages 1490-1500-G, incl.

(6) Copy of transcript of proceedings held after recess, Tuesday, January 27, 1973, pages 1466-1467, incl.

Robert McNamara, Jr
(Signature)

Robert M McNamara, Jr
(Name Typed)
Research Assistant to Chief Counsel
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April 24, 1973

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United States District Court
for the
District of Columbia

UNITED STATES OF AMERICA,	)	
	)	
V	)	Crim. No. 1827-72
	)	
GEORGE GORDON LIDDY, ET AL.,	)	
	)	
Defendants.	)	

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Vol: 1 Prepared for: Court

DATE: January 5, 1973 PAGES: 1 - 50

GERALD NEVITT, CSR

Official Reporter

U. S. Court House
Washington, D. C. 20001

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Extension 274

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
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V.	)	Criminal No. 1827-72
	)	
GEORGE GORDON LIDDY, ET AL.,	)	
	)	
Defendants.	)	

Friday,
January 5, 1973.
Washington, D. C.

The above cause came on for hearing of motion before THE HONORABLE CHIEF JUDGE SIRICA, United States District Judge, commencing at 10:00 a.m.

Appearances:

For the Movants:

CHARLES MORGAN, JR., ESQ.

For the Government:

EARL SILBERT, ESQ.
SEYMOUR GLANZER, ESQ.
DONALD CAMPBELL, ESQ.
Assistant U. S. Attorneys

For the Defendant Liddy:

PETER L. MAROULIS, ESQ.

For the Defendant Hunt:

WILLIAM O. BITTMAN, ESQ.
AUSTIN S. MITTLER, ESQ.

For the Defendant McCORD:

GERALD ALCH, ESQ.

P R O C E E D I N G S

THE DEPUTY CLERK: Will counsel please identify themselves.

MR. MORGAN: Charles Morgan, Jr., attorney for movants.

MR. SILBERT: Earl J. Silbert, together with Seymour Glanzer, in behalf of the United States, Your Honor.

MR. BITTMAN: William Bittman and Austin Mittler in behalf of defendant Howard Hunt.

I am also here, Your Honor, Mr. Rothblatt cannot be here because of the shortness of the notice and he has asked me to represent him in connection with this motion.

MR. MAROULIS: Peter L. Maroulis, in behalf of Defendant Liddy.

MR. ALCH: Gerald Alch, in behalf of defendant McCord.

THE COURT: Are all defendants represented? I take it they are.

MR. BITTMAN: Yes, Your Honor.

THE COURT: All right, Mr. Morgan.

MR. MORGAN: May it please the Court, we yesterday filed a motion for a protective order with respect to this hearing. We have as yet received no ruling on that motion with respect to the disclosure of contents herein or the disclosure of contents in brief or oral argument.

THE COURT: Let me interrupt you a minute, please.

As you know, under the rules of our court -- and I take it a copy of your motion was just served on Government counsel yesterday; correct?

MR. MORGAN: Night before last.

THE COURT: They have five days, if they wish to exercise that privilege.

Do you waive your right, Mr. Silbert, to have the five days that is usually granted to reply to these type of motions?

MR. SILBERT: Yes, we do, Your Honor.

THE COURT: You are ready to go ahead and make your reply. All right.

MR. SILBERT: Yes, Your Honor.

MR. MORGAN: Under Your Honor's order of October 4th and your order of October 6th with respect to the press and the witness conversations before trial, in the O'Brien case, parallel civil case that is being conducted here, the depositions were sealed and the proceedings were stayed until such time as this trial was concluded in this case.

The Government policy in the Alderman case and Muhammed Ali wiretap case, in which I was involved, and others, always involves an attempt, at least, to disclose in camera conversations, if at all, and contents.

In this case, though, the Government takes the

position that the hearing should be open for some reason, that this hearing should be.

THE COURT: I think the hearing should be in open court.

MR. MORGAN: All right, sir.

I want to point out to the Court that the protection of the contents of the conversation under the First and Fourth Amendments are the reasons we are here.

We are the only aggrieved persons to any conversations. We are the only people hurt in the entire prosecution, other than the United States and its Constitution if the allegations prove valid.

The folks that I represent happened to be the people who talked on the telephone and whose telephone it was.

THE COURT: Let me ask you a question. How do you know the Government is going to introduce evidence regarding the alleged conversations?

MR. MORGAN: The Government has told me.

THE COURT: They are going to?

MR. MORGAN: Yes, they are going to attempt to.

Now, it is for that reason with respect to this hearing and any other disclosure of contents --

THE COURT: Let me understand you correctly. The Government, according to you, is going to introduce evidence as to the contents of the conversation, or the fact that they

talked over the telephone?

MR. MORGAN: No, to the contents.

Of course, the statutory definition is broad. The identification of parties to conversations, purport, intent, all of that goes into contents under the statutory definition.

The Government intends to go broadly into contents in this conversation -- contents of the conversation in this case.

Now, we have an informer in the case named Baldwin. Mr. Baldwin has given newspaper interviews, he has given television interviews, as I understand it, and talked with reporters. He has, additionally, talked with the Federal Bureau of Investigation. He has talked with Mr. Silbert and he has made disclosure.

Now, the disclosure of contents of any or all of these conversations, even if the conversations said no more than, Look, Mom, I have no cavities, is forbidden by statute, as well as by the Constitution.

It is interesting to me, and I think we ought to look at it this way, there are eight counts in this indictment, seven defendants. Of the eight counts in the indictment, the last seven counts have no charge with respect to use or disclosure or any other matter other than possession, breaking and entering, or whatever. Count number one of the indictment charges interception and use. No count in the indictment

charges disclosure.

Now, prior to 1968 the law required, for a wire-tapping prosecution, the Communications Act, in Section 605, required both interception and divulgence. The Congress in 1968 did away with divulgence as an element of the offense of interception.

Now, for some reason, the prosecution in this case has no indictments which relate to disclosure. The disclosure of contents is not an issue in the trial, except insofar as the rights of the aggrieved persons to protect the privacy of their conversations and the people about whom they talked and the people who used the telephone that they don't even know and, hypothetically, the chairman of South Dakota to discuss a political question relating to somebody in Indiana.

And if it is said that in this court there will be no introduction of evidence relating to that kind of contents or only generally, whatever it is, then my response is: we have competent defense counsel who have a right to cross-examine.

Secondly, the Government has FBI statements under Form 302 that must be produced once they put Mr. Baldwin on the witness stand.

Now, Mr. Baldwin is not just a listener, he is a talker. And the things Mr. Baldwin talked about constitute crimes, whether they are uttered here or anyplace else; and his utterance of those things in the future, just as his utterance

of those things in the past, is a crime, as much a crime as any act charged of the defendants in the indictment.

Now, I would like to give Your Honor an example of exactly what I am talking about. If this is going to be in open court, then I would like for everything to be, at least insofar as this argument.

In the civil case the depositions were ordered sealed. I have, of course, seen the deposition of one of my clients, Mr. Oliver. He was interrogated by Mr. Rothblatt. I have made some extracts from that interrogation, they are under seal, and I have them under seal there in my possession, the extracts.

I would like to demonstrate by some of Mr. Rothblatt's questions the fact that not only the United States knows of the conversations of my client and not only Mr. Baldwin and everybody he talked to, but I think the defense does too.

So in this case, to me, at least, the only people who are injured, the aggrieved people, the ones who did nothing more than pick up their telephone and talk on it, are now the only ones that everybody around has the gossip over and everybody knows what they have talked about, and, frankly, not even they know, in some instances.

If I may go into the depositions, Your Honor, I would like to do so now.

THE COURT: Is there objection by the defense?

MR. BITTMAN: Yes, I have objection to it, Your Honor.

These depositions -- and I have not seen them, I was not present in the course of Mr. Oliver's deposition -- they are under seal based upon an order by Judge Richy.

I would object to it.

I am fearful that it may generate some publicity on the eve of trial; and if there is going to be any discussions into any of the substance of the sealed depositions that may generate any prejudicial publicity as to my client, I would object to it and ask that the hearing be in camera.

THE COURT: I will hear you on the objection.

MR. MORGAN: Yes, sir.

MR. BITTMAN: I might add that I do believe, Your Honor, that at the very least, Judge Richey should be consulted because of the fact that he is the District Court Judge that issued the order sealing these depositions.

THE COURT: I will hear you on it, Mr. Morgan.

MR. MORGAN: I would respond that Judge Richey issued the order in order to protect the trial in your case. That is his stated reason for doing so, and that seems to me to be a matter of your judgment rather than his.

The second thing is that if it is an open matter and an open hearing and if folks are entitled to discuss things

here --I was the one who moved to close this hearing-- then I think what is sauce for the goose is sauce for the gander, and I am the gander.

THE COURT: I am afraid the gander is going to lose in this case. I will sustain the objection.

MR. MORGAN: May I submit to Your Honor under seal what I am talking about?

THE COURT: If you want to come up to the bench I will hear you.

(Bench conference transcribed separately and sealed by order of Judge Sirica.)

(End of sealed bench conference.)

MR. MORGAN: Your Honor, as long as -- I would like for the other counsel to have the copies, but two of them have returned them to me. One of opposing counsel still has a copy, which he might want to return or might want to keep. It is perfectly all right with me either way.

THE COURT: Very well.

MR. MORGAN: He chooses to keep it.

MR. MAROULIS: Your Honor, I would like the record to reflect that counsel for Mr. Liddy has returned the papers that were tendered to him.

THE COURT: The record will show that.

MR. BITTMAN: As has the attorney for Mr. Hunt, Your Honor.

THE COURT: As to all of these defendants. All right.

MR. MORGAN: No, sir, not as to all of the defendants. Mr. Alch, I understand, still has a copy, and I am happy for him to have it.

THE COURT: Do you want to return yours, Mr. Alch, or do you want to keep it?

MR. ALCH: Not at this time, Your Honor, unless there is a request made by either counsel or the bench. I would like to reserve my option until I see just how this hearing develops.

THE COURT: Very well.

MR. MORGAN: I think that is fair, Your Honor.

Now, sir, as I understand the law under the Act, the Omnibus Crime Control Act, every offense in the indictment can be proved without disclosure of contents.

THE COURT: You maintain it can be proved, that every count can be proved without disclosing any contents or the substance of anything that was said over the telephone?

MR. MORGAN: Exactly.

The case would be closer had disclosure been charged. On a disclosure case, I suppose you would have to indict, and then if the person you indicted would not tell you to whom he disclosed, you would then have to bring in the witness, the person in that kind of a case to whom it was disclosed.

THE COURT: What was the purpose of the Act? Will you tell me your conception of the Act, your understanding, interpretation of the Act?

MR. MORGAN: My conception of the Act is two-fold:

First, it was to enable the Government of the United States to procure evidence with respect to organized crime and other criminal activity in the United States and to do it in a judicial manner, to do it with prior approval of wiretapping through warrant procedures and through judicial surveillance of the surveillance procedure.

THE COURT: You don't have the Government allegedly tapping telephones; you have someone else doing it.

MR. MORGAN: And that was the second purpose of the Act. It was to assure the American people and everyone as to the privacy of their wire and oral communications. It was to say to every American you have a right to talk on the telephone and nobody -- and the Act is clear in 2515, it is illegal, and in 2511 and -12, it is illegal for anybody, be it government, private citizen, whoever it may be, to orally intercept without the consent of a party to the conversation, any conversation in the United States of America.

Of course, the right of privacy that is talked about in the Senate committee report, it is spoken of in the House, it is spoken of in the cases, that right is a right guaranteed by the First and Fourth Amendments of the Constitution.

In the very recent case of United States v. United States District Court, Mr. Justice Powell talks about the uneasiness of surveillance in a society, the uneasiness that is looked upon, the suspicion that is looked upon; and in that case they said not even the President of the United States and the Attorney General of the United States can go beyond the courts without getting a warrant first, to engage in surveillance for domestic security, for national security purposes.

Now, in this instance the folks who have a right to a telephone, who are engaged in political and private speech

on that telephone -- and as we say in our memorandum, gossip is the poetry of politics -- they have a right to talk on that telephone and a right to do so as does every American, without anybody listening to them and intercepting, without anybody every disclosing anything if they do illegally listen, and without anybody using it if they ever got it.

Now, in this particular instance these Americans are covered by the Act itself and by its stated purpose, one of its two basic purposes, to protect the right of every American to privacy.

Now, the Association has 55 member chairmen and 55 membervice-chairmen. Five people are named in this case as movants. They all, in our judgment, have standing because they are the ones that the Act was designed to have standing for. They have standing not only under the Supreme Court decisions but under the clear statement of the Act.

They followed the procedure they are supposed to follow. They come into this Court with their constitutional rights and their privacy and they are saying in this Court we want your protection, we were the ones hurt and injured by whoever it was, assuming it happened, conducting this wire-tapping. We want to be as fair as we can to these criminal defendants. We want justice done, and that is simple fairness. We want to be as fair as we can to the prosecution and want to assist the prosecution in every way possible as to ferretting

out all of those involved in this crime.

But we don't want the prosecution and they do not want the Federal Bureau of Investigation or the Department of Justice or anyone else to have any memoranda of any conversation that they conducted on that telephone, no matter how innocuous it was.

Now, that information exists. It exists in FBI statements; it exists in a Form 302 file form that is going to be produced by Mr. Baldwin; it exists, perhaps, in the Los Angeles Times tapes, to which I have not been privy.

That information exists many places and we want it back and we want it destroyed, and we think we are entitled to that remedy because that is the way we right the wrong. And the remedy is provided under this Act and in this proceeding.

Sure, we can sue for damages, and I place everybody on notice that my client fully intends to go after anybody, be he lawyer, law enforcement man, anybody else, who divulges or discloses any matter on these conversations. And there is a statutory penalty for it and attorney's fees are allowed.

It is the clear policy of the Act --

THE COURT: That would make you happy, I think.

MR. MORGAN: That would make most of us happy, Your Honor, who practice law. And I know one other thing about

it; it would make the country happy because that is the policy the Congress expressed and that is the reason they encouraged such law suits, to keep the privacy of conversations.

I would like to reserve some time, of course, to respond to whatever is said.

THE COURT: I will hear from Government counsel.

MR. SILBERT: May it please the Court, Earl Silbert, appearing in behalf of the United States, together with Seymour Glanzer and Donald Campbell.

Your Honor, the United States is here today with respect to only certain portions of the all-embracing virtually open-ended motion that the movants have filed before Your Honor, I believe yesterday or the day before yesterday.

We are here with respect to that part that seeks to quash the subpoenaes served on R. Spencer Oliver and Ida Wells or prohibit the disclosure of contents of intercepted telephone communications. We are here with respect to that part of the motion.

Also, if the Court please, it seeks to prohibit our office, the FBI, Mr. Baldwin, from disclosing contents of intercepted communications during the course of the trial which Your Honor has scheduled for Monday, January 8th.

Now, it is true that under the Federal Communications Act, 47 United States Code, Section 605, that a violation, if the Court please, consisted of both interception and disclosure

or divulgence, that is, divulgence was an element of the offense.

But, if the Court please, though disclosure is not or divulgence is not an element of the offense in this case, it is the position of the United States that the evidence we seek to introduce is material and relevant to the charges.

As Mr. Morgan indicated, in the first count of the indictment, the conspiracy count, defendants are charged, among other things, with attempting to steal information from the Democratic -- steal and use information from the Democratic National Committee Headquarters.

Obviously, if we can prove that that was done, that information was stolen, information was used for any purpose, that would be part of our proof toward the fact that there was a conspiracy to effectuate that illegal purpose.

Furthermore, with respect to the 8th count of the indictment, if the Court please, it charges that from on or about May 25, 1972 and continuing up to on or about June 16, 1972, within the District of Columbia, the defendants Liddy, Hunt and McCord, wilfully, knowingly, unlawfully, did intercept, endeavored to intercept and procure and cause the interception of wire communications received by and sent from telephones located in the offices and headquarters of the Democratic National Committee and used primarily during this period by Robert Spencer Oliver and Ida M. Wells.

Now, if the Court please, with respect to that, it is true that the divulgence of the contents is not an element, but it is clearly relevant, in our view, to the proof that that crime was committed.

If I may give an example. We intend to put on a witness during the course of the trial who will testify that he did intercept or participate in the interception of the communication.

We have to prove that a certain telephone conversation or that certain telephone communications were intercepted. How are we going to do this? One of the ways we are going to do it is to have that witness get on the stand and say, I listened to a conversation, the person who claimed to be talking was a Mr. Oliver and he was discussing a subject matter "X".

We then intend to follow that up by putting Mr. Oliver on the stand and saying, Did you have occasion to use a certain phone and have a certain communication and did you discuss subject "X"?

That is the way we intend to prove the fact that the crime alleged in the 8th count of the indictment was committed.

That is certainly one of the methods that we intend to use.

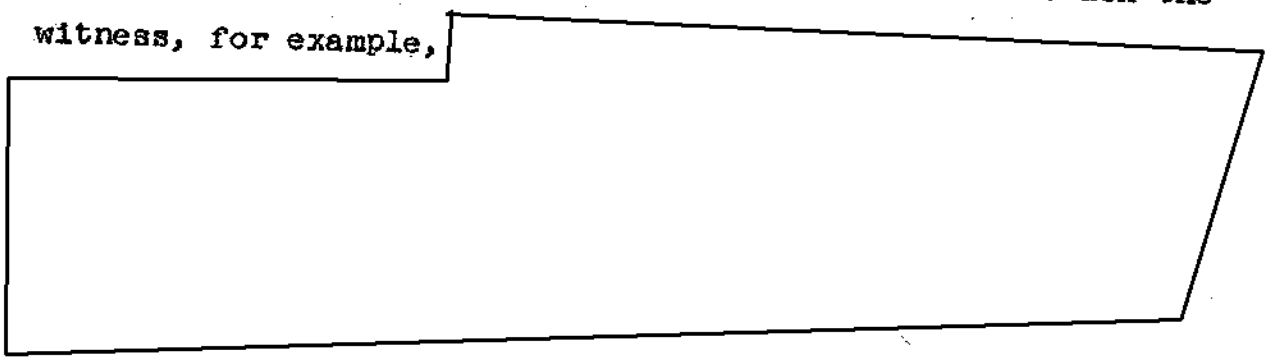
Furthermore, if the Court please, Your Honor has

inquired, as I indicated before, justifiably so, as to the motive for which this was done. In our view -- and our witness will testify as to what kinds of conversations the persons with whom he was working were particularly interested -- the general characterization of those conversations is highly relevant and should be brought before the jury so that they may infer, if they choose to do so, as to what was motivating the defendants in this case.

So that, number one, with respect to proof in fact that the crime was committed and, secondly, with regard to proof as to the motivation, what moved these people, we think that the evidence is relevant and material.

Now, first of all, let me assure the Court that as far as the United States is concerned, and I have mentioned this, we have discussed this with Mr. Morgan in our office and I have had occasion to discuss this with Mr. Oliver, himself, personally, at length, we do not intend to go into the specific content, the specific details, on our direct examination, of any matter that could be considered sensitive.

The most we will do as to any area is to ask the witness, for example,



[redacted]

We do not intend to ask him what the content of any sensitive personal or highly personal conversation was.

Similarly with respect to anybody else that takes the stand on this matter with respect to their personal, business or professional life, we will ask for a general characterization of the conversation, was it sensitive, and anything that was sensitive we will not go into.

Now, we might ask as to content did [redacted]

Again for part of the proof, to show that the conversation was overheard.

Now, if the Court please, we have approached defense counsel with respect to this matter, to see if any agreement could be received along this line. Naturally, they have not agreed because they are not familiar, to my knowledge, at least some of them claim not to be familiar with the contents of the communications.

But again we have represented to Mr. Morgan, and we

will do so, that if during the course of the trial on cross-examination there is any attempt to go into details of the conversations, other than for legitimate cross-examination, that is, neither to vex, harass or humiliate any of the witnesses that we call --and they are our witnesses and we want to protect them and we intend to protect them as best we can-- we will be up before Your Honor stremuously objecting to any line of cross-examination that goes beyond a legitimate scope.

Now, if the Court please, if I may, turning to the case law and authority, there has been a plethora of authority cited before Your Honor in the memorandum submitted by the movants. None of it, not one case has anything to do with the kind of issue submitted to Your Honor here today except one case cited for a different proposition by the movants. That is United States v. Gris, 146 F. Supp. 293, Southern District of New York, 1956, affirmed 247 F. 2d 860, 1957.

Basically, all the other cases cited by counsel for the movants involve situations where there was an attempt to suppress conversations overheard, but overheard by the Government and the Government was seeking to utilize conversations or illegal wiretapping or surveillance that it had engaged in as part of a prosecution.

Now, if the Court please, in United States v. Gris, to which I referred, a person in that case was charged with

conspiring to violate the Communications Act, the section to which I have previously referred, 47 United States Code, Section 605, and he had been hired, I believe, to listen in at the behest of a husband, to listen in on some conversations of the husband's wife. He was prosecuted for, as I said, conspiracy to violate that Act.

One of the defenses that he raised --and admittedly he is in a different position because he was a defendant; and in this case we don't have the defendants making this motion-- he sought to prevent the disclosure of the conversations that he was alleged to have intercepted. In the lower court, Judge Frederick Van Pelt Bryan, in the District Court, said:

> "Defendant's reasoning, if accepted, would place an almost insurmountable burden in the way of prosecution for violations of Sections 605 and 501. It seems almost axiomatic that a prosecution under these sections for unauthorized interception and divulgence of wire communications would require the introduction in evidence of the communications so intercepted to establish the basic elements of the crime. On defendant's reasoning I would be forced to conclude that Congress, in adopting Sections 605 and 501, on one hand made it a crime to do the prohibited acts and, at the very same time, denied

the Government the means to establish that the offense was committed."

On appeal, if the Court please, the same argument was raised before the Second Circuit and in an opinion by Judge Medina, concurred in by Judges Lumbard and Waterman, Judge Medina said:

"Curiously enough, appellant also argues that the Federal Communications Act itself bars the admission of the intercepted calls without the prior consent of both of the parties to the communication. It is apparently seriously urged that the statute should be so read as to be self-emasculating. Wiretap evidence is excluded by the Federal courts in order to discourage persons from undertaking the proscribed activities in an effort to obtain evidence for use in those courts. Where exclusion would not serve the purpose, the evidence is admitted. Here enforcement of the Congressional mandate clearly requires the admission rather than the exclusion of the unlawfully intercepted calls."

That is the basic position. It is the only one that is consistent with common sense, if the Court please.

Furthermore, Congress itself anticipated this very problem and in the Senate committee report, which is the only committee report dealing with the legislation under Title 3,

Title 18, United States Code, Section 2517 --

THE COURT: Let me get that again.

MR. SILBERT: Title 18, United States Code 2517 is the section dealing with the wiretapping statute that discusses authorization for disclosure and use of intercepted wire or oral communications.

Now, if the Court please, I have before me the Senate committee report, No. 1097, 90th Congress, Second Session, and in discussing the limitations placed on law enforcement officers as to the use they can make of telephone calls and their disclosure, the Senate committee report, which is an exhaustive scholarly analysis of the statute, page 99, had this to say:

> "Neither paragraphs 1 nor 2 are limited to evidence intercepted in accordance with the provisions of the proposed chapter since in certain limited situations disclosure and use of illegally intercepted communications would be appropriate to the proper performance of the officer's duties. For example, such use and disclosure would be necessary in the investigation and prosecution of an illegal wiretapper himself. See --"

And then they cite United States v. Gris, 146 F. Supp. 293 and the Circuit Court opinion in 247.

So that, if the Court please, Congress anticipated

this problem. The committee report, which, as I said, is the only committee report, specifically was aware of the situation that to prove a violation, where necessary and appropriate, you would have to introduce that kind of evidence; otherwise the legislation would be self-defeating.

THE COURT: Give me the page of that report again.

MR. SILBERT: 99, if the Court please, Senate committee report 1097, 90th Congress, Second Session, 1968.

THE COURT: That goes into the legislative history.

MR. SILBERT: That is correct, Your Honor. It is exhaustive of the whole Title 3 of the Omnibus Crime Control Act and Safe Streets Act of 1968.

Now, if the Court please, we are, obviously, in behalf of the prosecution, very sensitive to the problem of the invasion of privacy of these movants.

Your Honor, to give an example, virtually every crime of a common law nature involves an invasion of privacy. A prosecution for just any kind of burglary involves an invasion of privacy into one's home. A prosecution for robbery involves an invasion of one's person because property is taken from the person against his will and without his consent. There could be no greater invasion of privacy than in a rape case. Yet as awful as that invasion of privacy is, we know of no rule of law that permits the victim of that crime from taking the witness stand in pursuance of a government subpoena

in a prosecution for rape and having, as unpleasant as it is for her, to relive that awful experience in recounting the facts so the jury may have the benefit of her evidence and bring the offender, if he is the offender, to the court of justice.

To give another example, just take, for example, a married man. Let's assume a married man was having an affair with a lady at 2 o'clock in the morning in her apartment and two men broke in; they robbed the man, they raped the woman. They are apprehended, charged, indicted. That married man, no matter how embarrassing it was --and his privacy was invaded, that woman's privacy was invaded-- no matter how embarrassing, no matter how humiliating it may be, that married man would have to take the stand in a criminal prosecution. So would the woman.

Now, here Congress has set up a statutory offense for an invasion of privacy, overhearing a conversation. It clearly is a heinous crime, it is a serious crime. But to prove the offense, and we are trying to do it in the most reasonable but yet insistent way that we can, we submit that that evidence must be admitted.

Now, if the Court please, again we are very sensitive of the personal interest of those whose privacy was scandalously invaded, but we do believe that in the context of this case the public interest is paramount, the public interest

far outweighs their privacy and that in order to insure that the privacy will not be invaded by others who have the like intention in mind, we think the evidence should be admitted.

THE COURT: Let me see if I can sum up your argument so I can understand your position.

You are not interested in showing during the trial -- we will take Mr. Oliver, I think his name is, for example. He called his wife, said: I will meet you at 7:30, we will have dinner at such-and-such a restaurant. Sort of a private conversation. Correct?

But under the theory that you expect to show the motive and leave it up to the jury to decide why, if they do decide it, why did these five men go into the premises of the Democratic National Committee -- on the question of intent, as I indicated before, this jury is going to want to know, and I have indicated that I am going to allow considerable latitude on the question of intent. Cases are legion in that respect. It is going to be a very important part of this case. Why did they go in there? What was the motive? What were they seeking? Why did they tap or allegedly tap these telephone conversations? What did they hear? Was it solely for political espionage, was it for other purposes?

I don't know what is coming out of this case. Neither

do you or anybody else, frankly. But there are a great many things that have to be answered or should be answered and I am glad to see, Mr. Silbert, that you are taking this position.

As you know, there is great public interest in this case, not only throughout this country but maybe throughout the world, as a matter of common knowledge.

This jury is going to arrive at what the truth is in this case, in my opinion. They can only get it by following the rules of evidence, protecting the rights of each defendant and the rights of the Government.

But on the question of intent, it may be that some of these conversations might be important and relevant to the issues that will be submitted for the consideration of the jury.

The Democratic Party, according to the press and all --and it is a matter of record-- has been put in the position or was put in the position of criticizing what's happened, and rightly so, probably.

I am not prejudging this case. Why not let the facts come out? Let's find out what happened in this situation. Let's find out what the motive was.

Maybe these defendants might have an answer to it. They don't have to take the stand. I am not indicating that they should or should not. That is something that they will have to decide.

But I agree with you. On the question of motive, I

think that this evidence might be, I don't say will be, I say might be very relevant, very important on the question of why did they go into those premises on June 17th or what did they do before that time, et cetera.

It seems to me from the legislative history that you have cited and the purpose of the Act as I understand it, it might be relevant.

Now, I am not going to decide this question immediately. I am going to listen to Mr. Morgan, give him a chance or an opportunity to respond.

It is a very important question and it must be decided and I think should be decided before the trial starts Monday.

I want to read these few cases that you have cited, I want to look at that legislative history again. I looked at it sometime ago, but I want to be sure that I understand it correctly.

MR. SILBERT: May I make it crystal clear again, Your Honor, that we intend to tailor our questions on the direct examination so that, in our view, as not to divulge the specific details of any conversation that would be unreasonably or unnecessarily, if in fact such a conversation is, embarrassing.

THE COURT: This is not a case where the Government allegedly tapped or intercepted conversations. This is a case

where somebody not connected with the Government allegedly did it.

If they came in with a showing that the Government did not get the proper authorization from a judge to do these things or various other things, that might be one thing. But we don't have that situation here.

However, as I said, I think I have indicated how I feel at this point, but before I finally decide this matter I want to give Mr. Morgan an opportunity to respond. Then I am going to take the matter under advisement. I am going to try to get out a short opinion as fast as I can, and I will probably be able to decide this by 3 o'clock this afternoon.

I will hear Mr. Morgan.

MR. SILBERT: Thank you, Your Honor.

MR. MORGAN: Your Honor, I wondered if counsel for defense had any comment they would like to make.

THE COURT: I will ask them.

Do you have any comments, counsel?

MR. BITTMAN: I have nothing to say, Your Honor.

MR. ALCH: I would like to say something subsequent to the remarks of Mr. Morgan, however.

THE COURT: You wish to wait until Mr. Morgan --

MR. MORGAN: I am moving against both of them, Your Honor, and I should think I would have the right to hear both.

THE COURT: Pretty good opposition.

All right, Mr. Alch.

MR. ALCH: May it please the Court, in view of the remarks of Mr. Silbert, I don't know, but if Your Honor denied the motion to quash, it might be construed by the Government to be a resolve of the question of evidence in their favor; that is, they might construe Your Honor's ruling in denying the motion to quash as a green light, so to speak, for them to introduce even a general description of the matters picked up by the alleged interception.

On behalf of defendant McCord, our position is that the Government's contention that even a general reference to the topic of what may have been monitored is relevant to any element of motive or intent, is incorrect.

THE COURT: Is or is not motive?

MR. ALCH: Their contention is that it is. My contention is that it is not.

Let us take a hypothetical, which hypothetical may be tinged with reality. Let us suppose that the Government propounds questions to Mr. Oliver as to the general topic of the conversation allegedly monitored. Conceivably, without going anywhere beyond generalities, conceivably it might be argued by the Government in their closing to the jury that since the general topic of the conversation was a domestic one, let us say for example, that the ultimate purpose of the alleged

perpetrators was blackmail or some sort of nefarious conduct of that nature, which I heatedly contest.

So that I, for the record, reserve my right to object to any questions dealing even with the general topic of what may or may not have been monitored.

And if I am allowed to do so, I would join with counsel, with the movant, in asking that any questions regarding even the general topic be suppressed. For this reason: even in a case of authorized wiretapping completely in conformity with the statute, it is quite common that --let us suppose the purpose is to intercept communications dealing with narcotics, let us say, for example-- it is quite common for the bulk, if not all, of the properly intercepted conversations, to be completely irrelevant of the narcotic area.

So that what was or was not actually monitored, in my humble opinion, is in no way relevant to the intent of the alleged monitoring.

Under those circumstances, I would join with the movant.

And if Your Honor finds that the Government's contention is meritorious, in view of the assertion by the Government that it intends to at least skirt the general area of the monitored conversation, unless ordered to do so by the Court, it would be my preference for at least discovery purposes and adequate defense purposes, to maintain what has been

delivered to me by Mr. Morgan this morning.

THE COURT: Let me ask counsel for the Government a question. Does the Government intend -- and I don't think this has been discussed yet -- suppose you put Mr. Olver on the stand and his conversation with someone has been intercepted; correct?

MR. SILBERT: Yes, sir.

THE COURT: You ask him certain questions, and I am sure you wouldn't ask him any questions unless you have talked to him first and know what he is going to say.

Does the Government expect to introduce in connection with the information gathered from the tapping or interception, any so-called hearsay evidence? That is, where you don't identify the voice of the party talking on the other end?

Do you understand what I mean?

MR. SILBERT: If the Court please, the conversations -- the only persons that we intend to call with respect to the other end of the line, that is, the line of the intercepted communication, would be Mr. Oliver, Miss Wells, both of whom were participants in using the telephone; and I think we will always be in a position, if necessary, to identify the person on the other end of the telephone where it is appropriate, relevant and competent to do so.

I might say with respect to -- of course, we flatly

disagree with him that this kind of evidence is not relevant to motive and intent of the conspiracy as alleged, particularly when --and I think Your Honor ought to know this-- that we will show that the logs of the conversations that were prepared by Mr. Baldwin were given to Mr. Alch's client, that is, to Mr. McCord. All of them were given to Mr. McCord.

So that anything that we do will be, obviously, tied in to the defense in this case.

We are, obviously, not going to discuss or bring into evidence any kind of communication that has nothing to do with the defendants in this case. It will all be tied in. At least, if the jury chooses to accept the evidence.

But in our view, it will clearly be relevant and material to the conspiracy and substantive counts as alleged in the indictment.

THE COURT: What I have in mind, you probably remember the Olmstead case, Olmstead against United States. It is an old case that was decided during Prohibition times, I think. It involved wiretapping, divulging of certain information, conversation. But the Supreme Court, I am sure, ruled in that case that before that evidence was admissible you have to identify the voices of the persons who are parties to the conversation.

What I have in mind, I am sure you don't intend to take, for instance, a log of a lot of conversations without

knowing who was on one end of the telephone or identifying, because that might be very prejudicial to the defendants, and maybe the Government, because they have a right to be confronted by the witness who allegedly did the talking.

As to Mr. Oliver, I can see that you might not have a problem here, or any of these other witnesses; but if you put on testimony or try to put it on regarding an interception, we will say, of some person who is unknown, names unknown, talking about something, regardless of what it is, which would be in the nature of hearsay evidence, that probably might be going too far.

Do you understand? I just want to put you on notice.

MR. SILBERT: If the Court please, all the witnesses who testify, whose conversations were overheard, they will be identifiable; so that should the defense choose to do so, they may subpoena them in behalf of their defense at trial to challenge the accuracy of the statement. No question as to that.

THE COURT: Very well.

MR. SILBERT: If Your Honor please, before Mr. Morgan responds, there is one additional argument that I would like to present to Your Honor as to why in our view the Congress did not exclude the possibility, where relevant and material, to the admission of the contents of communication in a criminal trial.

Again referring to that section to which I previously addressed Your Honor, that is, the statute itself, 18 U. S. Code 2517, subsection 4 of that section reads as follows. That is again the section that discusses the authorization for disclosure and use of intercepted wire or oral communications. Subsection 4 reads as follows:

"No otherwise privileged wire or oral communication intercepted with or" -- and this is the key part --

THE COURT: "intercepted in accordance with."

MR. SILBERT: "in accordance with or in violation of the provisions of this chapter, shall lose its privileged character."

That means that the fact that a conversation was intercepted either legally or illegally, if it is a privileged conversation, husband-wife, lawyer-client, doctor-patient, it doesn't lose its privileged character.

Now, if the section had been limited to conversations intercepted in accordance with the provisions of this chapter, then I would have nothing to say about it. But it also says that no otherwise privileged oral communication intercepted in violation of this chapter shall lose its privileged character.

Now, there would have been no reason for Congress

to insist that illegally intercepted conversations, where appropriate, retain their confidential character if it had never been anticipated that it would be admitted into evidence.

Obviously, and again I would say this and clearly make the representation, that if there were any privileged communications intercepted in this case that were of a confidential nature, husband-wife, doctor-patient, et cetera, we do not intend to violate the proscription of that section. That is, if it is a privileged communication, we are not going to go into it.

But that section would not be in there, we submit, unless the Congress had anticipated that under appropriate circumstances, even conversations that were not privileged, if they were illegally intercepted, would be admissible.

Thank you, Your Honor.

THE COURT: I understand.

All right, Mr. Morgan.

MR. MORGAN: May it please the Court, first, under United States v. Gris, I think it is important for the Court to note that the District Court in that case specifically said the objection -- the objection was raised by Grist, the wiretapper. In this case he would be like Baldwin, who was listening. The Judge said that Gris couldn't raise the defense, and of course we agree.

But it says under Section 605 the objection may be

interposed only by a participant in the communication, i.e., a person or persons sending the communication or who were intended to receive it. And those are my clients.

The very case that the Government relies on, that is what it says.

It is comparable to the words that you used in Ammidown with respect to him not having standing because he was not a participant to any conversation.

But we are. Now, that is first.

Second, Gris was a case in the 1950's under Section 605, the old Act, and there interception and divulgence were elements of the crime.

Here no divulgence or disclosure is charged. For instance, no divulgence or disclosure, no disclosure is charged. The prosecutor used the words, he talks about all of the disclosure going to one of the defendants in this case. The defendant is not charged with disclosure himself. I suppose if he were charged, you would have to prove to whom he disclosed it.

Now, the prosecution stated where it's relevant and material. Yet in opening argument the prosecutor also stated it is not necessary to prove any element of the offense.

He discussed the question of rape and I think that is appropriate because under this Act any person whose wire is

tapped must look upon themselves as will the victim of the crime of rape, who knows, when they report that crime -- and I think the estimates are about one out of four are reported just because of this fact -- that they are subjected to penalties for doing no wrong. And beyond that, a number of states in the Union say to newspapers even you can't print the name of the person who was raped. And a number of other states say any testimony on it must be in camera, if not in camera, not printed.

Now, we say this Act protects the folks here because it makes it a crime for this information to come out.

And then we go further. Of course, we want the general relief if we ask for it, but we want the specific relief with respect to trial. We want the two witnesses, we want Mr. Baldwin placed under orders. They haven't talked much about what he is going to testify to. And if we could have a protective order now, then it is not necessary for somebody to object during the trial because I am sure the lawyers would abide by it, the witnesses would abide by it, on both sides.

Now, there are ways to show use, I should think.

The prosecution has asked me if I have any information about anybody higher up anyplace who committed any offense or got the information or anything. Well, I have told them that I will talk to them about that if my clients give me

release and I have such information.

And I now do have some information I think they could use as far as the use count is concerned, to show use. I intend to talk to them about that right after we talk here.

But that would go --

THE COURT: Let me understand what your statement means. Repeat that again.

MR. MORGAN: I said that I was asked by the prosecution, because, you see -- let me put that in context so you understand completely what I am saying.

Mr. Alch raised a hypothetical question that there might be a hypothetical motive of blackmail shown. Your Honor went into the question of motives for the wiretap. It is not hypothetical; that is what the prosecution intends to show was the motive in this case, was blackmail, not politics.

THE COURT: You say that the motive the Government expects to show is blackmail?

MR. MORGAN: Yes.

THE COURT: That is the first time I heard that.

MR. MORGAN: Yes, I know.

Now, that may satisfy the public and everybody.

THE COURT: You have made a statement --

MR. MORGAN: Yes, I am coming to that.

THE COURT: Something about higher-ups. I am interested in that. Who are the higher-ups? Do you know any

higher-ups that are involved in this case? If you do, I will let you go before the grand jury today.

MR. MORGAN: I will give you the statement that I have been advised by my clients that a man named [redacted]

Now, that would show a political use rather than blackmail as a use.

THE COURT: All right, if the Government thinks that is important evidence, they want to subpoena you, let you gobefore the grand jury, let your client go -- the grand jury is still together, we haven't discharged this grand jury and I am sure the Government is interested in finding out whether there are any higher-ups, so-called higher-ups involved in this case.

I think you, as a citizen, as a lawyer, if you know of any, it is your duty to disclose them.

MR. MORGAN: Exactly what I just did, sir.

THE COURT: We are all interested in that.

All right.

MR. MORGAN: Yes, sir.

When Your Honor went into the question of intent

and motive and you were talking about that a minute ago, what I am telling you is that is what I think they are trying to prove the motive is.

I know in intelligence, in law, in politics, there are, I guess, stories we call cover stories.

That might say to some folks they might feel fine about that prosecution and defense politically.

That is not my concern, the politics of this case. My concern in this case is to protect the First and Fourth Amendment rights of my clients, every one of them. Not just the witnesses. And to protect them against Baldwin as much against the defendants, as much against the prosecutors, and against every man in this country, regardless of his position and wherever he works.

We submit that we should have that protective order, not as a matter of discretion but as a matter of right.

Thank you.

MR. BITTMAN: Your Honor, can I briefly be heard and make a very short statement for the record.

Your Honor, I would like to vehemently object to some of the statements that Mr. Silbert made during his argument which I believe were uncalled for.

Certainly there is nothing that Mr. Alch said that would precipitate a statement that Mr. Silbert made with

respect that certain logs were given to Mr. McCord.

This undoubtedly will precipitate massive prejudicial publicity on the eve of trial.

Your Honor has indicated that you were going to take massive safeguards, sequester the jury, elaborate precautionary instructions, et cetera, et cetera. Here, two days before or three days before the jury is selected, the entire anticipated panel is going to be subjected to this kind of publicity.

I am sure Your Honor did it inadvertently, but Your Honor asked a specific question of Mr. Morgan which in my opinion is going to precipitate additional prejudicial publicity, higher-ups. Now he has named an individual by the name of Harry Fleming.

THE COURT: Don't you think it might help your client?

MR. HITTMAN: No, Your Honor, prejudicial publicity in my opinion will not help my client.

There are a few cases, or maybe this has been the only case where there has been so much massive prejudicial publicity during a six-month period.

THE COURT: The only thing I want to say about this matter is this: I can't control the press, what the press writes. They have a right to be here. People have a right to

be informed, as you know.

You knew this was going to be a public hearing this morning -- I mean an open hearing. There was no objection made by you to an open hearing today.

Now, if any evidence comes out in this case -- and I have indicated that when I review these tapes or listen to these tapes, I think I have said this in substance, if I find out anything from those tapes that should go before the grand jury, it is going before the grand jury, regardless of who it might affect or involve. I don't know what I am going to hear, frankly.

All right. I don't think you can get any more publicity than you have gotten in this case.

MR. BITTMAN: I agree with that, Your Honor.

THE COURT: And I don't think what was said here is inflammatory or meant to influence some prospective juror. There is nothing said in this case today that hasn't already been stated in substance.

MR. BITTMAN: Your Honor, I am unaware that some of the allegations, some of the statements that have been made today have ever been stated in newspapers up to this point.

I do believe that if Mr. Morgan has any information or his client, Mr. Oliver, has any information, the grand jury is the appropriate forum because it can be testified to in secrecy.

THE COURT: What would you do in my place when you have a lawyer standing before you stating that he has some information? The thing to do is to ask him about it.

MR. BITTMAN: As Your Honor initially stated, then you should go before the grand jury.

I thought it was going to stop there.

There is nothing in the moving papers here, in my opinion, which would indicate there would be anything prejudicial stated on the eve of this trial. This is my concern.

As Your Honor indicated some months ago, that all hearings in connection with this case will be in open court, in any event.

I was the one that had made numerous motions to have certain of these hearings in camera because of my fear of possible prejudicial publicity.

Certainly there is nothing in the moving papers here which would indicate that this hearing, number one, would be in camera, because of Your Honor's earlier rulings; or number two, that if the hearing would be in open court there would be anything that would be stated that would be inherently prejudicial to the interests of my client.

I believe I have made my record, Your Honor.

THE COURT: You have made the record.

MR. BITTMAN: Thank you.

THE COURT: Thank you, Mr. Bittman.

MR. MAROULIS: Your Honor, I am Peter Maroulis on behalf of the defendant Liddy.

I would like to join in the objection that was just stated by Mr. Bittman.

THE COURT: Very well.

MR. MAROULIS: Additionally, lest my silence be misconstrued, Mr. Morgan has pointed out the First and Fourth Amendment problems that his clients face. I wish to state to the Court that I fully and vigorously intend to protect the Fifth and Sixth Amendment rights of my client and where cross-examination is required, I intend to pursue whatever remedies those Amendments give my client.

THE COURT: Mr. Silbert, do you want to answer?

MR. SILBERT: I do.

May it please the Court, first of all, as to the motives. Your Honor, I have stated before you on a previous occasion, and I will reiterate, that the Government will introduce evidence not as to one single motive but evidence as to which, in our view, the jury, if it chooses to do so, may draw conclusions as to a variety of motives influencing the defendants in this case.

Second, with respect to the comment, Mr. Morgan said that I asked him as to whether or not there are any higher-ups. There hasn't been a witness that has come before either the grand jury or been interviewed by myself, by Mr. Glanzer or

Mr. Campbell, that we have not asked, as witnesses who have a public duty to provide information, that if they have any information relevant to the involvement of any other person, not a higher-up or a lower-down or a middle-of-the-roader, but anybody, involved or connected, directly or indirectly, with this offense, we have asked them to provide us with that information.

I made that request of Mr. Morgan, and Mr. Glanzer and Mr. Campbell and myself have made it to every single witness with whom we have come in contact. We think that is no less than performing our own public duty and responsibility.

I might say at this time --of course, Your Honor, I needn't say it to you, but I will say it-- that if there were evidence of the involvement that would substantiate a charge against anybody else in connection with this charge at this time, they would be indicted now, together with the rest of these defendants.

That is all, Your Honor.

THE COURT: Mr. Morgan.

MR. MORGAN: Yes, sir.

I just want the record to show that we at all times endeavored to make certain the proceedings were held in camera.

THE COURT: Anything further?

We will adjourn until 3 o'clock.

(Adjourned at 11:20 a.m.)

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